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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,611	11/19/2001	Susan Davis Allen	116268	8411

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Peter Loffler
1546-1 Metropolitan Boulevard
Tallahassee, FL 32308

EXAMINER

KOKABI, AZADEH

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 03/01/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,611

Applicant(s)

ALLEN, SUSAN DAVIS

Examiner

Azy Kokabi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 18-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-15 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: page 3, lines 8 uses improper English or spelling and states "easy to don and use." Appropriate correction is required.

Election/Restrictions

2. Applicant's election with traverse of Invention I and Species A in Paper No. 4 is acknowledged. The traversal is on the ground(s) that there is no undue burden on the Examiner by examining both Species A and B. This is not found persuasive because Species A and B are patentably distinct from each other. Species A, depicted in figure 1 is drawn to a restraining device for the arm/hand, while species B as depicted in figure 8 is drawn to a restraining device for the foot/knee region. The distinct species have different structural properties. These species require two different searches and would be a serious burden on the Examiner. Applicant stated that Species A is encompassed in claims 1-15, 17-18, however claim 18 encompasses Species B, having arm, and will be withdrawn from further consideration.

Applicant further argues that claim 15 is generic. This argument is found persuasive because both Species A and B contain a housing, an attachment member, and a non-Newtonian fluid in the housing. Upon the allowance of a generic claim, applicant is entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. Although claim 15 is generic, the election of species between species A and B, as depicted in figure 1 and 8 is still deemed proper.

Claims 16, 18-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Soubry et al (U.S. Patent No. 4,480,716).

Soubry et al disclose a device comprising a housing (#10) with an opening (see figure 3) and a reel (#21) rotatably disposed in the housing. Soubry further discloses a tether (#13) having a first end attached to the reel and a second end located external of the opening (see figure 3). The tether of Soubry is wound about the reel (see figure 3). Furthermore, Soubry et al discloses a non-Newtonian fluid disposed within the housing and acting on the reel (see at least column 4, lines 18-32). The non-Newtonian fluid has an appropriate viscous fluid to provide frictional force on the spool and retard rotation of the spool (see at least column 2, lines 30-37).

Soubry further discloses a first strap (#11) attached to the housing and adapted to be secured about the torso of a person (see figure 1). The device of Soubry further comprises a first closure means (see generally at #18) for securing the ends of the first strap together. The tether of Soubry is comprised of a first section removably secured to a second section (see figure 3).

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Soubry further discloses two chambers in the housing (#10). The reel (#21) is disposed in the first chamber (see figure 4). A portion of the rotor (#24) is disposed in the second chamber such that the rotor is mechanically connected to the reel such that rotation of the reel causes rotation of the rotor and the non-Newtonian fluid is disposed within the second chamber (see column 4, lines 26-34).

The recited method of operation is anticipated by the normal operation of the Soubry device.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-15, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirkpatrick et al (U.S. Patent No. 6,095,936) in view of Soubry et al (U.S. Patent No. 4,480,716).

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Kirkpatrick et al disclose a restraining device having a housing (#18), a tether (#14) with one end portion attached to the housing and the second end external to the housing (see figure 4). The device of Kirkpatrick has a first strap (#12) attached to the housing and a first closure means (see figure 4). Kirkpatrick further discloses a second strap or attachment means (#16) attached to the end of the tether and adapted to be secured about an arm or limb of a person (see figure 6). The Kirkpatrick devices further includes a second closure means (#24) for securing the ends of the second strap together. The tether of the Kilpatrick device is comprised of a first section removably secured to a second section.

The movement of the restraining device of Kilpatrick is limited by an elastic cord. Kilpatrick fails to disclose a reel and non-Newtonian fluid in the housing to limit the movement of the device.

Sourby discloses a reel device used to encompass a person or user. The reel device of Sourby comprising a housing (#10) having an opening (see figure 3) and a reel (#21) rotatably disposed in the housing. Soubry further discloses a tether (#13) having a first end attached to the reel and a second end located external of the opening (see figure 3). The tether of Soubry is wound about the reel (see figure 3). Furthermore, Soubry et al discloses a non-Newtonian fluid disposed within the housing and acting on the reel (see at least column 4, lines 18-32). The non-Newtonian fluid has an appropriate viscous fluid to provide frictional force on the spool and retard rotation of the spool (see at least column 2, lines 30-37).

Soubry further discloses a first strap (#11) attached to the housing and adapted to be secured about the torso of a person (see figure 1). The device of Soubry further comprises a first

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closure means (see generally at #18) for securing the ends of the first strap together. The tether of Soubry is comprised of a first section removably secured to a second section (see figure 3).

Soubry further discloses two chambers in the housing (#10). The reel (#21) is disposed in the first chamber (see figure 4). A portion of the rotor (#24) is disposed in the second chamber such that the rotor is mechanically connected to the reel such that rotation of the reel causes rotation of the rotor and the non-Newtonian fluid is disposed within the second chamber (see column 4, lines 26-34).

Sourby teaches that a reel and non-Newtonian fluid disposed within the housing provides frictional force on the spool to provide a braking mechanism. Furthermore, it is well known that reel having a gel-like substance are necessary to generate friction (see for example U.S. Patent No. 5,758,839 to Kim and U.S. Patent No. 4,088,201 to MacFarlane). It is advantageous to use gel because non-Newtonian fluid, such as a gel cannot be easily abraded even though it has been used during a long time.

In view of Sourby, it would have been obvious to have provided the retraining device of Kilpatrick with the friction-limiting device of Sourby having a non-Newtonian fluid in order to provide frictional force on a spool without being easily rubbed or worn away by friction.

Conclusion

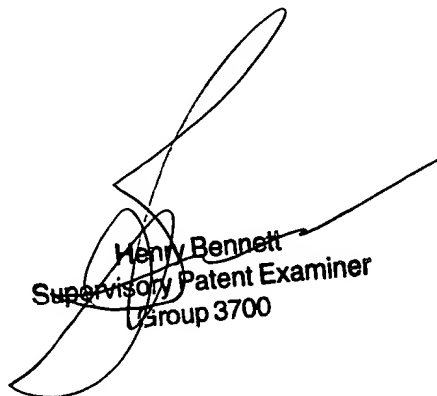
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azy Kokabi whose telephone number is (703) 306-4154. The examiner can normally be reached on Monday- Friday, 6:30am to 4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AK



Henry Bennett
Supervisory Patent Examiner
Group 3700